

GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR)

Labour Dispute :—Industrial Dispute between the Workmen and the Management, Bangalore Race Club Ltd., Race Course Road, Bangalore.

Award of the Labour Court, Bangalore—Published.

Read the following papers :

(1) Letter No. 1239 '67-68, dated 5th February 1968 from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

**BEFORE THE PRESIDING OFFICER, LABOUR
COURT, BANGALORE.**

Dated this 5th day of February 1968.

Present:

Sri P. T. Kadkol, B.Sc., LL.B.,

... Presiding Officer.

Reference No. 123 of 1966.

Workmen represented by the General Secretary, Indian National Trade Union Congress, Mysore State Branch, 142, Cottonpet, Bangalore-2.

I Party

Vs.

The Management, Bangalore Race Club Ltd., Race Course Road, Bangalore.

II Party.

Reference:

Government Order No. LMA 469 LLD 66, dated 28th October 1966.

AWARD

The Government of Mysore being of opinion that an Industrial Dispute exists between the Workmen and the Management of Bangalore Race Club Ltd., Bangalore, have referred it to this court for adjudication under Section 10 (1) (c) of the Industrial Disputes Act, 1947 by their Order No. LMA 469 LLD 66, dated

28th October 1966, setting out the following points of dispute for adjudication :—

"Is the management of Bangalore Race Club, Post Box No. 38, Race Course Road, Bangalore-1, justified in superannuating Sri Muniswamy IV and Sri Krishnan on the basis of the Medical Certificate? If not, what are the reliefs the workmen entitled to?"

2. The two aggrieved workmen Muniswamy IV and Krishnan, were in the service of the Bangalore Race Club Bangalore, as field workers. The Management thereof has terminated their services with effect from 15th January 1966 (a.d) on the ground that they had attained the age of 58 years, which is the age of superannuation in that Establishment. The grievance of the two workmen is that they have not yet reached the age of superannuation. Their cause has been espoused by the India National Trade Union Congress, Mysore State Branch, Bangalore, of which they are members. This Union, as representing the workmen is the First Party and the Management of the Bangalore Race Club is the Second Party in this proceeding. Mr. N. Keshava has appeared for the Union and Mr. B. R. Puttanappa has appeared for the Management.

3. It is admitted on both hands that in the Award made in I.D. No. 14 of 1963. between the workmen and the Management of Bangalore Race Club, the age of superannuation of the field workers has been fixed at 58 years.

4. The Union has submitted its claim statement dated 17th December 1966 on behalf of the workers. Leaving aside all the unnecessary details, the averments made therein are to the effect that Muniswamy IV was 49 years old and Krishnan was 54 years old when their services were terminated by the Management; the action of the Management in terminating their service is not *bona fide* and that they had been victimised for their trade union activities. The Union has prayed that the orders passed by the Management be set aside and the two workmen be directed to be reinstated in their former posts, with full back wages and continuity of service.

5. The Management has submitted its objection statement dated 8th February 1967. It has admitted that the age of superannuation fixed by the Award is 58 years. It has averred

that since the Management was not aware of the correct ages of their employees, it sent them for Medical examination, and retired only such of them as were certified to have reached or passed the age of superannuation and continued the others in service. It has asserted that it terminated the services of Maniswamy IV and Krishnan because they were certified to have reached the age of 60 years and not on account of any trade union activities of theirs. It has denied that its action in terminating their services was lacking *bona fides*. It has prayed that its orders terminating the services of the two workmen be upheld and the reference be rejected.

6. On these pleadings, the following additional issues have been framed and set down for hearing:—

1. What was the age of the two aggrieved workmen as on the date they were superannuated?
2. Was the Management justified in accepting their ages as mentioned in the medical certificates?
3. What Award?

Parties were directed to lead evidence on these issues. The Union has examined three witnesses and produced four documents. The Management has examined one witness and has produced seven documents. This is all the evidence in the case.

7. The main question arising for decision in this case is as to what was the age of the two aggrieved workmen on the date their services were terminated by the Management on the ground of their having reached the age of superannuation. If they had attained the age of superannuation (51 years) on that day, this Reference shall have to be rejected; otherwise, it will have to be accepted. Since no evidence of *mala fides* or victimisation on the part of the Management has been led by the Union, I hold those allegations as not proved.

8. The Award in I.D. No. 14 of 1963 between the parties, fixed the age of superannuation of the workers in the Establishment at 58 years. The Award has not been produced before me. Hence I am not in a position to know on what day it was made and on what day it was published.

9. After the Award was passed, the Management, naturally, wanted to implement it. But it was not knowing the ages of

about 52 of its employees. In the normal course of things, it should have called upon all such employees to produce evidence of their age before itself. If it was not satisfied with the proof of age submitted before it by any of them, then it could have sent such of them for medical examination for the assessment of their ages. But in this case the Management has skipped off the first step. It has sent all the 52 employees for medical examination, in batches. The Medical Officer examined them and issued certificates relating to their ages. After receiving these medical certificates, the Management would have done well in issuing notices to such of the employees as were certified to have had reached the age of superannuation, to show cause why their services should not be terminated or in other words, they be retired from service. The Management has not followed this course also. After receiving the medical certificates, the Management has straightaway retired all such employees as were certified to have had reached the superannuation. Many of the employees have accepted their retirement and have even settled their accounts finally with the management. The two workmen, now before us, have been certified by the Medical Officer to have had reached the age of superannuation on the day they were examined. Hence the Management has retired them. In this state of affairs, no *mala fides* or a spirit of victimisation can be attributed to the Management.

10. It is now necessary to determine whether the two workers had reached the age of superannuation on the day they were retired from service. The Management relies entirely on the evidence of Dr. M. B. Sundar Rao (M.W. 1) in support of its case. The Management wrote to him the letter dated 24th February 1965 (Ex. M. 1) and requested him to examine the seven workers mentioned therein, with special reference to their age, eye sight and fitness for employment as field workers and give his opinion. The two aggrieved workers are serial Nos. 3 and 4 therein. Exts. M. 2 to M. 7 are the certificates issued by Dr. Sundar Rao in respect of six of them. Ex. M. 2 relates to Krishnan and Ex. M. 3 relates to Muniswamy IV. They are dated 5th April 1965 and 6th April 1965 respectively. Dr. Sundar Rao has said in Ex. M. 2 that Krishnan gave his age as 43 years and in his opinion, he (Krishnan) was 60 years old and was unfit for field work due to overage. In Ex. M. 3, the Doctor has said that Muniswamy IV gave his age as 45 years and in his opinion he (Muniswamy IV) was 60 years old and was unfit for field work due to overage. After receiving these certificates, in April 1965, the Management has

waited till December 1965 and then retired them with effect from 15th January 1966. The Doctor has not given any reasons in these certificates for the opinion given by him, regarding the ages of the two workmen.

11. The Doctor has been examined before me. He (M.W. 1) has stated that he has examined the two workmen and issued the two certificates at Exts. M. 2 and M. 3. He has stuck to the opinion given by him. In his direct examination, he has not given any reasons to support his opinion. In his cross examination, however, he has stated that he examined them on the following lines:—

- (1) Appearance
- (2) Condition of heart and lungs
- (3) Condition of eye sight
- (4) Blood pressure.

Further down in the cross examination he has stated that he does not remember positively whether he had or had not taken the blood pressure of the workmen and added that it is generally taken; he did not find any necessity to take 'X' ray photographs of their bones as the bones do not give a good indication for fixing age; Emphysema of the chest is not a definite condition of old age; very likely that it was not present in the chests of the two workmen; he did not know if there was calcification and refraction in the bones of the two workmen and he did not think it necessary to take a radiograph, by taking which only, this factor can be determined; he has not kept any records in the Hospital regarding the examination of the workers, conducted by him, etc. Finally, he has stated:

"It is very true that the ascertainment of age is "guess-work" based on the examination of certain physical conditions. I have fixed the age of Muniswamy and Krishnan, as it appeared to me...It is very likely that the assessment of age made by one Doctor may vary from the assessment of the age of the same person, made by another Doctor. It is very difficult to fix the percentage of error in the ascertainment of the age of an individual made by a Doctor".

12. The Union has examined Dr. B. Venkat Narayan Setty (W.W. 1) in support of its case. This Doctor has examined the two workmen on 19th August 1966 and issued the certificates at

Exts. W. 1 and W. 2 with respect to their age. In these certificates, he has given the age of Muniswamy IV as 49 (Ex. W. 1) and the age of Krishnan as 54 (Ex. W. 2), on the date he examined them. He has stuck to his opinion before me. In his direct examination, he too has not given any reasons to support his opinion. In his cross examination, however he has stated that he ascertained the ages of the two workmen, by studying and taking into account the following factors:—

1. Personal History, regarding marriage, age of children, etc.,
2. Education history;
3. Service history;
4. Body examination;
5. Condition of skin and hair.

He has not, however kept any record of the personal, education and service history given to him by the workmen. He has also not recounted before me, the history that the workmen gave before him. Then he has narrated the condition of the skin, hair and teeth noticed by him and added that every test applied by him was a clinical test. Furtheron he has stated that he has depended on his own experience in ascertaining the ages of the workmen. When further questioned, he has stated that standard works on forensic medicine only indicate what tests may be adopted in ascertaining the age of an individual but do not say what conclusions should be drawn on basis of the tests adopted and factors observed. Finally, he has stated:—

“There is no objective test for ascertaining age. So far as I can say, on the same given set of data, the percentage of error in fixing the age of an individual, may be ten per cent, either side. In the case of Muniswamy, I have given his age as 49. Applying the rule of error, I say that he may be 46 or 52 years old. In the case of Krishnan, he may be 51 or 57 years old. The range will be six years. It is only by experience that we say that the range of error may be 3 years on either side. There is no test or guidance to fix this margin of error”

In his re-examination, this Doctor has corrected himself and stated that the margin of error may be 5 to 6 per cent and not 10 per cent.

14. So we find that these two doctors do not agree at all. The tests applied by them are different. The conclusions reached by them are different. Neither has kept any records of the examinations conducted by him. Both are eminent Doctors. Dr Sunder Rao was the Superintendent of the Bowring Hospital when he examined the two workmen. Dr. Venkat Narayan Setty is the District Surgeon, Bangalore. Both speak from their experience. It is almost impossible to say which of the two Doctors is correct in the opinions given by them. It is as likely that Dr. Sunder Rao is correct as it is that Dr. Venkat Narayan Setty is correct. The medical evidence adduced by the parties, does not give any solution to the complex problem before me. So, leaving it at this stage, I proceed to consider the other evidence in the case.

15. Muniswamy has examined himself as W.W. 2 and Krishnan has examined himself as W.W. 3. Both of them have stated that they belong to Village Palaya Siruvankur in North Arcot District, Madras State and were born there. When they received their orders of retirement, they protested to the Management and produced before it certified copies of their birth extracts from the birth register of that village. The Management refused to accept and act upon them. As asked by the Union, the Management has now produced them and they are marked as Exts. W. 3 and W. 4. They are in Tamil language. Their English translations have been given to me. These extracts show that one Muniyan son of Cholathachu or Payani, was born on 24th April 1917 and one Paramantha Muniyan had a son born to him on 14th June 1912, in that village. These extracts have been given on 31st January 1966. According to the Union, the 1912 extract pertains to Krishnan and the 1917 extract pertains to Muniswamy IV. Muniswamy has given the name of his father as Payani and Krishnan has given his father's name as Muniya. Both of them have sworn that these extracts relate to them. At the request of Mr. B. R. Puttananjappa, sufficient time was given to him to make an investigation with respect to these extracts. He was unable to say anything against them.

16. Now the question would be whether these extracts really pertain to the two aggrieved workmen. Muniswamy has stated in his cross-examination that his father was Payani and mother was Angamma; both of them are dead; he had three elder brothers and they all died in their childhood; he has three elder sisters living; etc. The cross-examination has not gone beyond

it. It is, however, pointed out by Mr. Puttananjappa that the name of the mother does not appear in the extract, though a special column has been laid out for it.

To further questions asked in the cross-examination Muniswamy has stated that he was living in his own village till he was 20 years old; then he came to Bangalore in 1936 and joined the service of the Race Club in 1937 and has completed 26 years of service therein. If this statement is accepted, then his age would be about 46 years in January 1966.

17. Krishnan has stated that he was born on 14th June 1912 and had not reached the age of superannuation when he was retired from service. The name of his mother does not appear in the birth extract produced by him. Further on he has stated that he stayed in his own village for the first 26 years, did not attend any school, then came to Bangalore and joined service in the Race Club and has completed 26 years of service therein. This would mean that he would be about 52 years old when he was retired.

18. The Management has not been able to lead any evidence in rebuttal, except the evidence given by Dr. Sundar Rao. The testimony given by Muniswamy and Krishnan stands almost un rebutted. The birth extracts produced by them appear to relate to their own births. I say so because they are in close proximity with their age that could be fixed on the basis of their personal history as given by themselves; the names of the "fathers" as appearing in them, are the same as the names of their "fathers" as given before me; and at least one of the two Doctors has given an opinion which if accepted, would bring the dates of their births quite in the neighbourhood of the dates mentioned in them. On the basis of these circumstances, I hold that Muniswamy IV was born on 24th April 1917 and Krishnan was born on 14th June 1912 and record my finding on the first issue accordingly.

19. Though the Management may have been justified in accepting the ages of Muniswamy IV and Krishnan, as certified by Dr. Sundar Rao, in the first instance, it should have re-examined the question of their age after the birth extracts were produced before it. I make only this observation with respect to the Second issue.

20. From the finding recorded by me on the first issue, it follows that the orders passed by the Management terminating the services of the two aggrieved workmen on the ground of superannuation requires to be set aside and I do so. They deserve to be reinstated with continuity of service and full back wages. Hence I make the following Award :—

Reference is accepted. The Orders passed by the Management terminating the services of Muciswamy IV and Krishnan on the ground of their having reached the age of superannuation are hereby set aside. The management is directed to reinstate them in their former posts with continuity of service and full back wages with all incidental and consequential reliefs as if their services had not been terminated. The Management is directed to reinstate them within one month from the date of the publication of this Award in the *Mysore Government Gazette*. Parties do bear their own costs.

(Sd.)

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

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P. T. KADKOL
Presiding Officer,
Labour Court, Bangalore.